

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff/Respondent,	§	
	§	
V.	§	CR. No. C-04-674
	§	C.A. No. C-06-36
RAMON RAMOS-ALVARADO, JR.	§	
	§	
Defendant/Movant.	§	

**ORDER SETTING EVIDENTIARY HEARING**

This Court denied Movant Ramon Ramos-Alvarado, Jr.'s ("Ramos-Alvarado") motion to vacate sentence under 28 U.S.C. § 2255 in an order entered October 10, 2006. (D.E. 49, 50).<sup>1</sup> Ramos-Alvarado timely appealed. (D.E. 51). In an *per curiam* opinion issued April 11, 2008, the Fifth Circuit concluded that this Court should not have denied Ramos-Alvarado's § 2255 motion without holding an evidentiary hearing as to his claim that he was denied effective assistance of counsel due to his counsel's failure to file an appeal. United States v. Ramos-Alvarado, Jr., No. 07-40098 (April 11, 2008)). In reaching that conclusion, the Fifth Circuit relied on a decision issued after this Court's ruling, United States v. Tapp, 491 F.3d 263 (5th Cir. 2007). The Tapp court held that even where a defendant has waived his right to appeal and his § 2255 rights, a § 2255 claim that counsel was ineffective for failing to file a notice of appeal requires an evidentiary hearing. See 491 F.3d at 266. Accordingly, the panel vacated this Court's denial of Ramos' ineffective assistance of counsel claim on that sole ground, and remanded for "further development" on the issue. United States v. Ramos-Alvarado, Jr., No. 07-40098 (April 11, 2008).

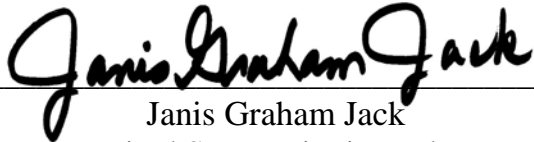
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<sup>1</sup> Docket entries refer to the criminal case, Cr. No. C-04-674.

Pursuant to the Fifth Circuit's opinion, the Court will hold an evidentiary hearing on the limited issue of whether Ramos-Alvarado was denied the effective assistance of counsel due to his counsel's alleged failure to appeal. Ramos-Alvarado is entitled to be represented by counsel at the hearing. See Rules Governing Section 2255 Motions 8(c). Accordingly, the Court appoints the Federal Public Defender's Office, 606 N. Carancahua, Suite 401, Corpus Christi, TX 78476-0401, to represent Ramos-Alvarado at the evidentiary hearing.

The evidentiary hearing is set for 10:00 a.m. on Wednesday, July 16, 2008.

It is so ORDERED this 3rd day of June, 2008.

  
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Janis Graham Jack  
United States District Judge